

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Respondent,

No. 2:96-cr-0088 GEB DAD

vs.

CALS IFENATUORA,

Movant.

ORDER

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Movant, a federal prisoner proceeding pro se, has filed a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255.<sup>1</sup> Since movant may be entitled to the requested relief if he can establish a violation of his constitutional rights, respondent will be directed to file an answer within thirty days of the effective date of this order. See Rule 4, Rules Governing Section 2255 Proceedings.

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<sup>1</sup> Movant's original motion, styled as a motion for writ of error coram nobis, was filed in this court on April 26, 2010. A second motion for writ of error coram nobis was filed on May 20, 2010. The motions have been construed as motions to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. Good cause appearing, the motion filed on May 20, 2010 is construed as an amended § 2255 motion filed as of right. See Fed. R. Civ. P. 15; Rule 12, Rules Governing Section 2255 Proceedings. The amended motion supersedes the motion filed on April 26, 2010, and this action will proceed on the amended motion.

1 Respondent shall include with the answer any and all transcripts or other  
2 documents relevant to the determination of the issues presented in the motion. Rule 5, Rules  
3 Governing Section 2255 Proceedings. Movant's reply, if any, will be due on or before thirty days  
4 from the date respondent's answer is filed.

5 Movant has requested the appointment of counsel. There currently exists no  
6 absolute right to appointment of counsel in § 2255 proceedings. See, e.g., Irwin v. United States,  
7 414 F.2d 606 (9th Cir. 1969). However, 18 U.S.C. § 3006A authorizes the appointment of  
8 counsel at any stage of the case "if the interests of justice so require." See Rule 8(c), Rules  
9 Governing Section 2255 Proceedings. In the present case, the court does not find that the  
10 interests of justice would be served by the appointment of counsel at this time. Accordingly,  
11 movant's motion for appointment of counsel will be denied without prejudice to its renewal at a  
12 later stage of these proceedings.

13 Finally, movant has filed a motion for production of transcripts at government  
14 expense. By this order, respondent is directed to include with their answer all transcripts relevant  
15 to determination of the issues presented in the motion. Respondent is required to serve a copy of  
16 the answer and all accompanying documents on movant. Movant's motion will therefore be  
17 denied without prejudice to its renewal, if necessary, following the filing and service of  
18 respondent's answer.

19 In accordance with the above, IT IS HEREBY ORDERED that:

20 1. Respondent is directed to file a response to movant's amended § 2255 motion  
21 within thirty days from the date of this order. See Rule 4, Rules Governing Section 2255  
22 Proceedings. An answer shall be accompanied by all transcripts and other documents relevant to  
23 the issues presented in the petition. See Rule 5, Fed. R. Governing Section 2255 Cases;

24 3. If the response to the habeas petition is an answer, movant's reply, if any, shall  
25 be filed and served within thirty days after service of the answer;

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1           4. If the response to the amended § 2255 motion is a motion, petitioner's  
2 opposition or statement of non-opposition to the motion shall be filed and served within thirty  
3 days after service of the motion, and respondent's reply, if any, shall be filed and served within  
4 fourteen days thereafter;

5           5. The Clerk of the Court shall serve a copy of this order, together with a copy of  
6 movant's amended § 2255 motion, filed May 20, 2010, on the United States Attorney or his  
7 authorized representative.

8           6. Movant's May 20, 2010 motion for appointment of counsel is denied without  
9 prejudice.

10           7. Movant's May 20, 2010 motion for production of transcripts at government  
11 expense is denied without prejudice.

12 DATED: September 29, 2010.

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16 DALE A. DROZD  
17 UNITED STATES MAGISTRATE JUDGE  
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